

Taking Human Rights Seriously at Home

RICHARD FALK

ONE of the great paradoxes of the progress of human rights thinking is that governments in the great majority of countries which adopt human rights treaties, Bills of Rights and the rest basically believe that human rights are only relevant for other countries. Human rights are treated, above all, as an instrument of foreign policy. This is evidently the case for the United Kingdom, where the Foreign Office is the leading department of state with responsibility for the UK's obligations under the European Convention on Human Rights and the International Covenant on Civil and Political Rights. It is particularly the case in the United States, which likes often to lead an international crusade on behalf of human rights, while taking grave offence at any suggestion that some of its domestic practices raise human rights concerns. To the extent that human rights does feature in American political discourse, it is as a stick with which to beat other states which have fallen foul of the State Department or are regarded as adversaries that threaten US strategic interests.

For this reason I feel a special solidarity with the aims of the Democratic Audit. The publication of its major study, *The Three Pillars of Liberty*, is an exciting event and a milestone in the process of constitutional democracies beginning to take human rights seriously within their own societies. It may even prove an important development for the United States; for there is still enough nervousness among Americans about whether our country isn't still a kind of younger, unnurtured relative of Britain for this initiative to have a positive resonance there. Even

our human rights groups have been very reluctant to focus their energies on human rights problems within the United States, or on events in countries that are close friends of the United States—Israel being the most obvious example. As in so many other realms, a serious approach to human rights must start from the proposition that human rights begin at home, that is, where infractions are most sensitive and hurtful.

A strong human rights culture is the necessary underpinning of an effective regime of human rights. That culture itself cannot take significant hold unless the political culture is supportive of human rights. Moving beyond the context of formal legal institutions and instruments, and even beyond the framework of constitutional democracy, it is increasingly obvious to me that one has to be concerned about the deformed, or the dangerous, dimensions of political culture that can spill over into the way in which democracy works as a political system. In particular, if one means by democracy, as it is generally understood, society's means of translating the will of the citizenry into prevailing policy, how does one find a sufficient counterweight to distortions in the political culture which are antipathetic, for instance, to minority rights at home or other peoples' rights abroad?

The emergence of a framework

In my view, the emergence in the last half century of a framework for assessing political behaviour on an international

level is one of the great achievements of international society in this period. It ranks in historic significance—and overlaps to some extent—with popular support for decolonisation throughout the world and the role of the anti-apartheid campaign in changing the political equation in South Africa. In other words, the development of a moral, legal and somewhat spiritual sense of solidarity among all peoples on issues of human rights, based on a common framework that is valid despite the ideological divisions of the Cold War and the North–South divide, remains a powerful and useful normative foundation on which to build the prospect of people's lives being lived in human decency in all the world's variety of settings.

It is, on one level, a partly unwitting achievement. The modern human rights movement after 1945 expressed a certain guilt among liberal democracies that they had done so little about Nazi Germany; that they had viewed the Nazi experience as a domestic affair; and that they had even consented to the Olympics being held in Berlin in 1936. These liberal democracies took no serious responsibility even for the people displaced by what was happening in Germany: as is well known, refugees were turned away, despite the desperation of their circumstances. The guilty conscience of these governments, reinforced by public opinion, gave rise to the political climate that allowed the Universal Declaration of Human Rights to be formulated. But this great instrument was formulated with the tacit or implicit understanding that it would never amount to very much. In part, the modesty of objectives was signalled by the codifying of human rights aspirations in a declaration, rather than a treaty which would be legally binding. In a world of sovereign states, international human rights, to the extent that they are taken seriously, are inherently subversive of sovereignty. If their implementation remains at the level of

rhetoric, they can be reconciled with a pleasing moral demeanour for states. But if human rights become a real standard of assessment for the behaviour of governments, they introduce a major qualification to the self-protective doctrine of mutual non-intervention among states.

Two sets of factors gave the idea of human rights the political force that the founding states almost certainly did not anticipate. The first was the degree to which Cold War rivalry allowed reference to human rights standards as a convenient way of castigating the ideological adversary. Both sides in the Cold War emphasised those failings of their rivals that they felt exhibited their own superiority. The West emphasised individual freedom; the Soviet bloc, the provision of collective rights and a relatively greater acceptance of social and economic responsibilities than their capitalist adversaries were prepared to adopt. So human rights were invoked by important states, partly out of conviction, but mainly as an instrument of propaganda. These ideological exchanges did, however, give human rights an unexpected political salience.

The second development was the emergence of non-governmental organisations, civil initiatives and transnational social forces that did take seriously the international standards embodied in the Universal Declaration and pushed for their elaboration in the two UN covenants—on civil and political, and on economic, social and cultural rights—and in other international instruments. These treaties conferred legitimacy on the standards, which were then supervised by UN committees and could be invoked by activist groups. Governments found themselves in the awkward position of having to account for their failures to live up to standards that they had themselves articulated and affirmed.

An additional dimension of this international momentum involved the grow-

ing tendency of resistance movements to oppressive regimes to invoke human rights to legitimate their own struggles. This was to some degree true in the anti-colonial movements, especially with respect to the right of self-determination; but it was perhaps most dramatically evident in the citizens' movements of east and central Europe during the 1980s. The Helsinki process played a crucial role, through the Conference on Security and Cooperation in Europe (CSCE) and its 'human rights dimension', in delegitimising the puppet regimes in power and giving the social forces that were seeking reform a confidence that what they were doing domestically had been mandated by these international standards. In a sense, then, one of the roles taken by international human rights developments has been to legitimise political resistance to oppression, wherever it occurs in the world. It has been very important to resistance groups and movements to have this kind of foundation for their political project, to have their goals sanctified by law and based on a standard to be applied to all countries and to all governments. The human rights framework has provided a ground for the politics of resistance, of opposition and of struggle.

This post-1945 development of human rights is quite remarkable, considering the degree to which states have a shared interest in *not* having their internal behaviour subject to external scrutiny. This reluctance has been very evident in relation, for instance, to the manner in which the UN has handled the right of self-determination. Even at the height of the Cold War, East and West were able to agree that the exercise of the right of self-determination must never shatter existing sovereign states. In other words, self-determination was acceptable during the process of decolonisation, but not, say, in the context of Chechnya or the post-Soviet states, or Yugoslavia, or Indonesia

and East Timor, or for the Kurds, Iraq and Turkey. In these contexts, states were very clear that the rights of peoples had to be subordinated to the overriding interest of states in maintaining their territorial integrity, regardless of the human rights implications or any people's rights to self-determination.

Since 1989, the scope of the right of self-determination has become more ambiguous and remains unresolved. Practice on self-determination has been quite at variance with the law as set forth in authoritative UN General Assembly resolutions which deny validity to any claim of self-determination that is state-shattering. Recent international practice has been to acknowledge a whole series of new states emerging in ways that have involved the break-up of prior territorial units. The units of the former Soviet Union and former Yugoslavia have claimed a right of self-determination and their claims have been accepted.

The 'fourth stage' of human rights

The second main point I want to make in this article is the exceptional importance of the Democratic Audit idea as a way of carrying the human rights movement forward to a fourth stage. I write 'fourth stage' because the Italian political philosopher Norberto Bobbio has traced the evolution of human rights through three significant stages in *The Age of Rights*. A first, philosophical stage goes back to the earliest reflections on the human condition, which may be viewed as being brought to a kind of moral focus in the writings of the Roman Stoics. They were concerned about the degree to which there is a human family and human solidarity, and sought to justify treating all humans as equal and as properly receiving treatment that accords with their intrinsic dignity. This philosophical tradition, always marginal to the way

politics was practised, issued in a very forceful second stage with the American and French revolutions, which proclaimed, as a matter of national political resolve, the commitment, albeit flawed, to give citizens and, in the French case, all people, certain basic rights. These revolutionary movements provided the modern inspiration for translating philosophical ideas about human dignity into legal form and political practice.

The third stage, of course, is the degree to which these revolutionary ideals have been transformed from their national settings into international legal instruments. The process of discussing and creating those instruments has spread an awareness of human rights to the entire world and has enlisted, at least at the level of rhetoric, support for the idea that all societies, to be legitimately governed, must adhere to human rights. This normative consensus, of course, breaks down as soon as one considers the implementation of these international standards. It remains difficult for Westerners fully to appreciate the degree to which external pressure to uphold human rights in various parts of the world is perceived as a new pretext for interventionist diplomacy. Intervention on behalf of human rights resembles the Mississippi River: it only flows from North to South. Human rights activism, therefore, that is associated with the foreign policy of big states—and particularly the United States—is seen as a postcolonial interventionist politics that uses the banner of human rights, often to the detriment of people in the target societies. It is not only that these important states in the North invoke human rights, but that they invoke human rights as a pretext to interfere in foreign societies in ways that oppress people in those societies and do harm to their quality of life.

The United States, for instance, has justified many of its interventions in Central America on the grounds that it

was promoting democracy and human rights. In the case of Nicaragua, the US State Department grounded its objection to the Sandinista government on the failure of the Sandinistas to grant adequate democratic space to the political opposition. This position was argued, even though the Sandinistas had probably the best human rights record of any government that Nicaragua has ever had, and constituted the most impressive government in the region. Yet the neighbouring governments in Central America were allies of the United States, and their dreadful human rights records were ignored. At the very moment when the US was waging a 'low-intensity' war against Nicaragua, killing many Nicaraguan people and sabotaging their livelihoods, the repressive military regimes in, for example, Honduras and Guatemala were receiving large-scale military and economic support. There is clearly a problematic side to the enthusiasm for human rights, if it gets entwined with geopolitics. The alleged promotion of human rights can be a way of undermining the sovereignty and independence of weaker countries and can be exploited as a shield, validating intervention in other countries that is carried out for geopolitical purposes.

This complexity suggests the great importance of the fourth stage of the evolution of a human rights culture and an international human rights regime: namely, the internalisation of human rights standards by indigenous action within a particular society, and especially within countries that are either practitioners of intervention or immune to interventionary pressures. Until that effort at serious internalisation by the citizens of countries throughout the world actually takes place, the impact of international standards is likely to be very uneven and sporadic, both domestically and globally. One needs, in other words, a continuing political struggle on the ground to realise human rights. That

is why I think the Democratic Audit is such an exciting idea and has such wide potentialities for others.

Having said that, however, I must express one cautionary note: the extension of the idea to other societies needs to be undertaken on their terms rather than in mimicry of the process that has gone on in the United Kingdom. In other words, the project is a bit like Italian wine that does not travel well; it has to be invented anew in each society. There are two ways of thinking about the Democratic Audit: one is as a liberal project with the political language that has been used in its operations in Britain; the other is as a process of internalising human rights within the state-society relationship. In that second, more important, sense of internalisation, the citizenry and the popular sector of other societies must evolve their own forms of internalisation, their own political language, their own means of collecting and disseminating relevant information.

I have been involved with an organisation in Malaysia that is, in a way, undertaking a parallel project to the Democratic Audit. This organisation, the Just World Trust, uses the acronym JUST. It is very much concerned with the internalisation of international standards of human rights. But it is equally concerned to analyse the international structures that interfere with the capacities of some countries to fulfil human rights claims. For instance, it calls attention to the effects of structural adjustment programmes set by the World Bank and IMF that are difficult to reconcile with efforts to promote economic and social rights in a variety of heavily burdened countries in the South.

The importance of participation

In the fourth stage, then, it is the spirit of the Democratic Audit which counts, and must be replicated as far as possible. It is very important that there be a strong

participatory dimension to the way in which this internalisation of international standards occurs. Helena Kennedy has, for instance, spoken persuasively about the participatory nature of the adoption of a Bill of Rights in Canada. Part of the strength of the human rights culture which has emerged there derives from the sense given to Canadians by the consultative process that they were participating in the creation of the norms. Of course, the insistence on universality is of great importance politically throughout the world. But the universality debate in human rights has been insensitive to the fact that even if the standards that have emerged are valid universally in their core claims, the process by which they have been established was not universal. They did come largely out of Western experience, and it was largely the influential Western figures of political and moral authority that were responsible for drafting and advocating human rights instruments. Even if such instruments are given some kind of formal endorsement nationally, that endorsement does not create the strong political and moral 'bonding' that is necessary to make human rights really take hold in a political culture. In my view, participation in the process by which norms evolve is of great relevance to whether legitimacy is actually achieved. An ethos of participation and consultation needs to be at the very core of an effort to extend and build human rights culture. People who are the victims of existing abuse particularly need to share in the decision to adopt human rights standards and implementing procedures. The absence of participation in the norm-creation process limits the force of international human rights standards for non-Western countries.

We can observe the consequences of non-participation very clearly in the case of indigenous peoples. They did not participate, directly or indirectly, in the framing of the international human

rights instruments. Yet indigenous peoples have a distinctive perspective that bears on the content of human rights. The most fundamental concern of indigenous peoples is with maintaining their way of life, and by insisting on this they bring a new meaning to the concept of self-determination. What human rights and self-determination mean to various indigenous peoples was not at all reflected in the Universal Declaration or in either Covenant, documents drafted on the assumption of protecting individuals living in modern societies. When the International Labour Organisation in 1957 attempted to close this gap by drafting a convention especially tailored to indigenous peoples, it did so in a paternalistic spirit. This well-meaning body set about drafting a convention that would give indigenous peoples the opportunity of access on a non-discriminatory basis to the societies they were living in. In other words, the ILO promulgated an assimilationist view of indigenous peoples' rights—a view entirely at odds with what the overwhelming majority of their leaders and members wanted. As soon as indigenous peoples had their own arena in Geneva for formulating what human rights meant to them, they found existing human rights instruments so uncongenial that they spent a decade writing their own draft declaration on the rights of indigenous peoples. That declaration is now being scrutinised by various organs within the United Nations. What will eventually happen to it remains to be seen; but the whole experience confirms the view that human rights cannot be solely concerned with substantive standards, but must be attentive to process, especially to the participation of vulnerable constituencies in the creation of norms.

My concern that the process by which human rights standards emerge must be participatory if they are to gain the strong legitimacy they require to elicit compliance has a bearing on current debates

about Islam and the West. Islam has been systematically excluded from participating in important arenas of authority, not only in relation to human rights but in international society generally, in such a way as to make its claims appear to have a very questionable purchase on moral reality.

Another element of progress in human rights that needs to be considered further is the relationship between the affirmation of democracy and the promotion of human rights. On one level, democracy itself is a human right. It is delimited in Article 21 of the Universal Declaration of Human Rights, at least in skeletal form. Nevertheless, one can observe a political culture in democratic societies that is often downright hostile to the implementation of human rights. There is, then, a tension between political democracy and respect for human rights. One sees it now in the United States in several manifestations. One is the so-called 'war against immigrants' that is under way. American society is sending politicians the signal that anything they do to deprive immigrants, legal and illegal, of rights is politically rewarding. Opportunistic politicians are being led by majoritarian sentiment to a far greater degree than any ideological convictions they may have. This very serious problem is aggravated by the impact of economic globalisation on workers and on the moral and social fabric of the society in which they live. A search for scapegoats has begun that singles out (among others) those who would enter political space without the credentials of citizenship.

In the same sort of way, many societies are ready to reward politicians who use force against foreign societies in violation of international law. This is a human rights question because, in effect, politicians are encouraged to challenge the right to life of people in other societies. Consider two recent examples of politicians, faced with elections, who believed that the way to enhance their standing

with their own citizens was to engage in violence against foreign societies. The Israeli attacks on southern Lebanon in the run-up to the 1996 Israeli election were not mainly motivated, as alleged, by the threat of terrorism, but were an attempt by the then Prime Minister, Shimon Perez, to show that he was tough enough to deal with the Palestinians and with the Arab world. It was a failed attempt, as it turned out, at the expense of innocent civilians in a foreign society, because the Israeli electorate, supposed to heed this kind of political demonstration, did not. Bill Clinton did the same thing with the US missile strikes against Iraq prior to the 1996 presidential election. Evidently, Clinton also sought to demonstrate to the American people that he was tough enough to use force against the enemies of the United States. He also used force in a particular way that is connected to the most elementary understanding of human rights. The new technologies of international violence allow a country like the United States, or Israel for that matter, to use force against a foreign society with almost no human risks to itself. It is one-sided violence that resembles the structure of torture, for the violence that is embodied in the relationship of the torturer to the victim is similarly one-sided with no prospect of retaliation. There is no risk to the torturer. At a political level, society colludes in the torture; indeed, part of the deal between a Clinton and his public arises from the new tacit understanding that force can be used to inflict suffering without paying the cost of having American soldiers being shipped home in body-bags.

Another expression of the problematic side of democracy was evident in the recent Bosnian elections. The ritual of voting, which is a quintessential democratic practice, was essentially used by outside forces in a way that disguised and validated the earlier outcome of ethnic cleansing. In some sense, the democratic rituals were used to white-

wash, to enable external forces to avoid responsibility, even to impose an aura of respectability on several leaders who were guilty of, or at least complicit in, crimes against humanity.

There is, in brief, a problem with the affirmation of political democracy in a culture that values violence against foreign societies or, for instance, is prejudiced against asylum-seekers and refugees, as is the case in both the US and much of Western Europe at present. This is not to propose antagonism to democratic constitutional forms. But one needs to maintain a critical awareness of the limitations of democracy, as well as its virtues. These critical comments on the operation of political democracy in certain settings recall the criticisms of democracy that have been prevalent throughout the ages and have sometimes led morally sensitive observers, as in ancient Athens, to reject democracy as a system of governance.

The perils of economic globalisation

There remains another, often overlooked, international trend that is antagonistic to human rights throughout the world. Economic globalisation, within a neo-liberal climate, has already had a negative impact on the pursuit of human rights. The constant ideological pressures disavowing public goods, seeking to entrust social responsibility to the private sector, and generally encouraging the transfer of responsibilities away from government and towards the market, calls into question the capacity of a contemporary government to administer a compassionate state. The problems are most cruelly felt in developing, or rather non-developing, countries, but every state in the world has to face the question: can we afford to be compassionate towards our own people under the discipline of global capital? Or, to put it a different way, can

Sweden still be Sweden? The fact is, Sweden is no longer Sweden—in the sense that, in order to accommodate the pressures of the global market, recent governments in Stockholm have had to roll back some of the country's most impressive welfare achievements. This 'rolling back of the state' has essentially been endorsed by both main political parties and by the political mainstream. The same is true of the United Kingdom, where the Labour Party has in effect subscribed in many crucial respects to the political economy of its adversary. It is certainly true of the Democratic Party in the United States! By using the term 'essentially', I mean to say that, in terms of any holistic view of human rights, governments are now generally unable and unwilling to promote economic and social rights as goals of official policy. Political leaders recognise the primacy of market forces that are directly opposed to the imperatives of economic and social rights, the satisfaction of which alone make a reality of ideas of popular participation and political equality in our societies. A crisis is waiting to be born, or perhaps, to erupt.

How to proceed, given this general assessment? First, in addition to internalising human rights and democratic aspirations in the spirit of the Democratic Audit, the left must adopt a more critical perspective on the problematic aspects of political democracy as it now seems to be operating, even in moderate societies like the United Kingdom. We must also devote far more thought to extending our understanding of the prospects for a human rights culture under the pressures of economic globalisation, as it is currently proceeding. We may be creating a set of economic practices and attitudes that are diametrically opposed to extending necessary help to the most vulnerable sectors of world society and of our own societies. For anyone who believes, as I do, that the essence of the human rights impulse is to protect the vulnerable, and

that the identity of those people who are vulnerable changes as society evolves, the parallel existence of globalisation and neo-liberalism poses a very serious threat to human rights, particularly in an atmosphere that implies the absence of alternatives. At this moment, there seem to be no viable alternatives to a neo-liberal reliance on market forces and the logic of capital.

Therefore, there is a compelling need to adopt a wider frame of reference when we consider how to make a human rights culture a viable part of the political life of the United Kingdom, in the first instance, but also that of countries throughout the world. Secondly, dialogue within and between the major world civilisations needs to be carried on in a way that involves far more deference to the experience and perspectives of non-Western participants. In this regard, it is crucial to appreciate that human rights can only be advanced by reference to the particular conditions and challenges that exist in particular countries. They must reflect the specific sensitivities of time and place. This is the most effective way of recognising the fact that human rights are widely believed to be a Northern export, though it is clearly inherent in the very idea of human rights. There also has to be far more sensitivity to this belief in the South, which is particularly common in the Islamic world but prevails elsewhere too.

My final conclusion is that military intervention to implement human rights is to be avoided, particularly when that intervention does not have the backing of international institutions. Foreign policy uses of human rights are almost always wrong. Coercion is legitimate only for the protection of the self, not for the enlightenment of the other. Discussion of human rights violations in international politics is desirable; interventionary practice in the domain of geopolitics is undesirable. Human rights essentially have to be achieved through the domestic efforts of

peoples living in widely varying circumstances. These conclusions are more about building a human rights culture in a global perspective rather than doing so in one country. But the two projects are interconnected as, ultimately, they could reinforce each other.

This brings me back to my starting point: namely, the crucial need to locate the struggle for human rights within the indigenous capabilities of a particular country seeking to improve the quality of its own political life. This is how international standards can be carried forward most effectively at this stage.

Bodies like the European Court, the UN Human Rights Committee, the ILO and other international institutions and the host of external non-governmental organisations are required, of course, to facilitate the pursuit of human rights, particularly in generating information, awareness and informed criticism, and by developing further norms and procedures. But to the extent that coercion is needed to overcome failures and abuses of human rights, it has to be located principally within the domestic political space.